

**ATTORNEY GENERAL'S REPORT REGARDING NOVEMBER 24, 2013
SHOOTING IN MANCHESTER, NEW HAMPSHIRE**

The Office of the Attorney General and the Manchester Police Department have conducted an investigation into two shooting deaths that occurred in Manchester, New Hampshire on November 24, 2013. As a result of that investigation, New Hampshire Attorney General Joseph A. Foster has determined that David Hoffens (age 20) was justified in using deadly force when he shot Charles Cable (age 20) and that the shooting of Edgar Hoffens (age 22), which resulted from David's gun discharging during a struggle between David and Cable, is not chargeable as a crime due to the circumstances present.

This report summarizes the pertinent facts surrounding the shooting, as revealed by the investigation, and explains the legal analysis which led to the conclusion that no criminal charges will be forthcoming.

FACTS

The incident was first reported at approximately 3:51 PM on Sunday, November 24, 2013. Jennifer Russell, a resident of 331 Lake Avenue in Manchester, placed a 911 call reporting that two men were outside of the building with guns. Within the first few seconds of the call, the dispatcher heard screaming. Soon thereafter, Ms. Russell told the dispatcher that her boyfriend, Edgar, had been shot.

331 Lake Avenue is a three-story, multi-family home with three apartments primarily accessed from a series of stairs and exterior porches on the southwest side of the building. There is a very narrow walkway of just a few feet between the west side of 331 Lake Avenue and the building next door, 329 Lake Avenue. Both Charles Cable ("Cable") and Edgar Hoffens ("Edgar") were found in this area by first responders; Edgar at the bottom of the stairs leading to 331 Lake Avenue, and Cable in between the two buildings.

Edgar lived at 331 Lake Avenue with several other members of his family, including his girlfriend Jennifer Russell, his mother Cynthia Hoffens ("Cynthia"), her boyfriend Daniel Morgan ("Morgan") and their young son D.M. (less than 4 years old), and his brother, David Hoffens ("David").

Cable was the cousin of Anthony Floyd (age 24). Edgar and David had been in an ongoing dispute with Floyd for a number of years. Manchester police officers had previously been called in the months prior regarding the dispute between the two groups.

On November 24, 2013, Officer Derek Feather of the Manchester Police Department responded to the initial 911 call and went to 331 Lake Avenue. He found a male later identified as Cable lying face down on his right side with an apparent gunshot wound on the left side of his temple. Cable was transported to Elliott Hospital where he died a short while later.

Officer Feather was subsequently directed to the body of a deceased male, later identified as Edgar, lying at the base of the stairs leading into the first floor of the building. Edgar was lying on his right side with his right arm extended, and his hand was covered in blood. There was a black and gray 9mm Ruger semiautomatic handgun on the ground close by.

Manchester Police Officer Joe Ryan also responded to 331 Lake Avenue. When he arrived, he learned that Cynthia was on the phone with her son, David. After she hung up she told Officer Ryan that David was on Lake Avenue, he was coming back to the house, and he was scared. Cynthia then called David back and Officer Ryan could hear a male voice answer Cynthia's call. He asked if he could speak on the phone, and Cynthia agreed. Officer Ryan described David as crying and hysterical throughout the phone call. David told Officer Ryan, "I didn't mean to do it." He said he was scared and panicked after Cable had held a gun to his head, and was fearful that Cable was pulling out the gun again to shoot him (David) when he fired. David told Officer Ryan that he threw his revolver in an alleyway.

David told officers where he was, and he was taken into custody a few minutes later. Officers escorted David to the Manchester Police Department where he later agreed to speak with detectives about what happened.

After the crime scene was secured an investigation ensued. Investigators interviewed David and members of his family, Cable's relatives, acquaintances of both families, and their neighbors and friends. Manchester police detectives searched the shooting scene and the vicinity for evidence related to the incident, as well as several residences. The investigation revealed the following information.

Events Leading Up to the Shooting:

At the time of the incident, David and Edgar had been in a long-term dispute with Anthony Floyd and members of his family.¹ While tensions had ebbed and flowed, the dispute was active again by November of 2013. In the week before the shooting, someone had spray painted the words “ANT FLOYD SKINNER” on the side of Han’s Market at 353 Maple Street in Manchester.² Floyd took offense to this, and believed David was responsible for the graffiti. Floyd and several of his relatives told investigators that David had driven by him during the week prior and flashed a gun at him, taunting him to fight. The day of the shooting, Floyd told Cable about that incident, as well as the graffiti. Cable responded that he was going to go to the Hoffens’ home and arrange a fistfight to settle the issues between the men. Floyd later left the home with his brother, leaving Cable behind.

After Floyd left, Cable spoke with his cousin, John Bussierre (age 24) about a plan to arrange a fistfight between the Hoffens brothers and the Floyds to end all ongoing disputes. Bussierre told investigators that Cable wanted to take a gun with him for protection and he convinced Bussierre to give him Bussierre’s gun, a black .45 caliber Hi-Point semiautomatic handgun. Bussierre took the gun from a lock box belonging to Tammy Floyd at the Floyd’s home. Bussierre removed the four rounds that were in the gun and then showed Cable how to rack the slide, explaining that the sound of racking the slide should be sufficient to stop anyone from, “causing a problem.” Bussierre was adamant that he told Cable not to display it, “or do anything stupid.” He explained that if either David or Edgar threatened them with a gun, Cable’s mere display of the gun, “would spook [David and Edgar] enough,” to stop them. Tammy Floyd, who was in the home at the time, “flipped out” when she heard Cable say that he wanted to bring the gun, and she tried to talk him into leaving it behind. She then took the four rounds of ammunition from Bussierre. Shortly thereafter, Cable grabbed the empty gun for himself, and he and Bussierre left for 331 Lake Avenue.

¹ Several witnesses gave statements about this long-term dispute. Jennifer Russell and Daniel Morgan described it as a long standing feud involving Anthony Floyd and David and Edgar. Cynthia Hoffens told first responders that, “This has been going on for months. You guys have been here before and no one ever does anything.” Cynthia explained that one of the last officers who came to her home cautioned David and Edgar that this ongoing feud, “is going to end when someone gets shot,’ and look what happened.”

² Skinner is a street-slang term that implies a person has committed a sexual assault against a minor.

While Cable and Bussierre were headed towards Lake Avenue to confront the Hoffens, Floyd and his brother were walking on Wilson Street when a blue 4-door sedan pulled up. Floyd told police that David Hoffens got out of the rear of the car, began to yell at Floyd, and then displayed or pulled a black item out of the front of his pants. Floyd believed the item was likely a gun because David had brandished a black gun in the past. Floyd told investigators that David shouted, “Come to my house and we can fix this,” which Floyd understood as a challenge to a fight. After David took off in the car, Floyd went home, but left after just a few moments, and headed for the Hoffens home on Lake Avenue.³

Investigators interviewed Cynthia Hoffens and Daniel Morgan. Both individuals confirmed that they were with David coming home in Cynthia’s car after running errands. Cynthia reported that two men approached the car from the rear as they neared the Wilson Street School and David began yelling out the window at them. She recognized one of the men as Anthony Floyd, but not the second male. As David was exchanging words with them, Cynthia told him to knock it off because her young son, D.M., was in the car with them.

David admitted driving past Anthony Floyd and his friends that day. He also admitted to carrying a black .32 revolver with him at the time, but denied having ever flashed it at Floyd. Instead, David told investigators that Floyd flashed gang hand-signs to David, to which David yelled words to the effect of, “You don’t want any of this,” or “You won’t do anything!”

After the incident, David and his family continued driving down the street to their home at 331 Lake Avenue. Immediately upon their arrival, David, Cynthia, and Daniel Morgan saw two men outside the home. These two men were Charles Cable and John Bussierre.

The Shooting Outside the Hoffens’ Apartment at 331 Lake Avenue

As Cynthia’s car came to a stop, David exited the car and went to confront Cable and Bussierre. Cynthia and Morgan brought D.M. inside through the back porch. Cynthia found Edgar Hoffens inside the apartment and told him to go outside because David was out there

³ Floyd arrived at the Hoffens home after the shooting occurred looking to confront David, not realizing Cable had gone to confront the Hoffens, or that Cable and Edgar had been shot.

with two unknown men. Edgar turned to his girlfriend, Jennifer Russell, and told her to go get his gun, a black and gray 9mm Ruger semiautomatic handgun. Edgar stepped outside for a moment, then came back inside and told Jen to call 911. He told her that John Bussierre and another man outside with David had guns. Edgar took his gun from Jen and went back outside with the gun held down at his side. Jen placed the call to 911 seconds before the shooting, at approximately 3:51 PM.

From inside the home, Cynthia heard David yell, "Get away from me!"

1. John Bussierre's Statement

John Bussierre was interviewed on November 24, 2013. He gave the following account: He and Cable approached David as David was getting out of the car, to arrange a time for the fistfight. He stood to the side while Cable confronted David about the ongoing dispute between the groups and the proposed fistfight. David said he would shoot Anthony Floyd if he, "brought any problems." Bussierre and Cable both responded with words to the effect of, "It doesn't need to come to that." David shouted for Edgar to come out, "with the gun," after which Cable partially displayed his gun to David. David shouted, "You don't f***ing threaten me!" Edgar came outside and stood at the bottom of the porch holding a handgun. Bussierre knew Cable noticed the gun because Cable said words to the effect of, "If you want to, two can play at that game," and then pulled his gun fully out of his waistband.

In his first statement to investigators, Bussierre said David pushed Cable away from him. Bussierre could see Cable was angry so he walked towards Cable to convince him to retreat, but before Bussierre could reach him, Cable pushed David back against the house at 329 Lake Avenue and grabbed him. David pulled out a revolver and start shouting at Cable, at which point Cable let go. Bussierre said David took one step back and shot Cable. Bussiere described David as shooting him once in the head, but later said that David's arm was "flailing" when he shot at Cable, "a few times," before shooting Cable in the head. David was standing up against the building at 329 Lake Avenue facing Cable when he fired the gun, putting Cable between David and the porch where Edgar was standing. Cable never fired his gun.

After the shooting, Bussierre said David ran away, saying words to the effect of, “I warned him, I told him!” or “I warned you, I told you I’ll f***ing shoot you!” Bussierre went to check on Cable, and saw that his gun was lying next to Cable on the ground. He picked up the gun, saw Jen Russell on the porch, and yelled for someone to call 911. He then ran to Floyd’s house with the gun, where he gave it to David Floyd to put back the lockbox where it was kept. He returned to Lake Avenue to watch the police activity and speak with investigators.

In his second statement to investigators, Bussierre’s account of the actual shooting changed. He reported that Cable was grabbing David with his left hand when David pulled out a revolver and fired at Cable. Bussierre insisted in this statement that David shot at Cable three to four times before he fired a final fourth/fifth shot toward Cable’s head. He also changed his description of where the men stood, putting David closer to the back porch of 331 Lake Avenue, and Cable closer to 329 Lake Avenue: thereby placing Edgar behind David when the shots were fired.

2. David’s Statement

David Hoffens spoke with police multiple times on the evening of November 24, 2013. He gave the following account: After the confrontation with Floyd, he drove home with his mother, stepfather, and brother. When they arrived, David saw Cable and another man who he did not know, later identified as Bussierre. David got out of the car and approached Cable. David was wearing his .32 caliber revolver in its holster on his hip. Cable came up to him, pulled out a black semiautomatic handgun with his right hand, and dragged it down the side of David’s face. Cable hastily put the gun back into his waistband when he saw Cynthia and Morgan either getting out of the car or coming out of the apartment.

David and Cable continued to argue. David yelled words to the effect of, “Don’t put that gun to my head!” so his other family members would hear. He also told Cynthia to have Edgar, “Get his s***!” meaning Edgar should come outside with his gun.

As they continued to argue, Cable suddenly grabbed David’s throat with his left hand and pinned him against the side of 329 Lake Ave. This put Cable between David and the

entrance to his home inside 331 Lake Avenue. Cable reached with his right hand toward his right waistband. David believed he was reaching for the gun again. David used his left hand to knock Cable's hand away from the gun, and used his right hand to reach down and draw his own revolver. Cable grabbed David's right hand, and the two men struggled for control over the revolver, during which the gun discharged. David said he had not been trying to fire the gun. David believed that the shot might have struck Edgar, but was unsure.

After the revolver went off Cable let go of the revolver and stepped back, again reaching to the right side of his waist. David believed Cable was reaching for the gun and was going to shoot him. Fearing for his life, David fired at Cable. Cable's left hand grasped at his right side he spun away to David's right. As he spun around, David said he saw Cable still reaching for his own gun, so David fired a second shot that struck Cable in the head as he was spinning. Cable immediately collapsed to the ground. David told investigators that he was not aiming specifically at Cable's head, but was just firing in Cable's direction.

After David fled the scene, he discarded the gun near a trash barrel west of Hall Street, the holster in a different trash barrel in an alleyway on Lake Avenue near Hall Street, and his blue hooded sweatshirt in a bush where Hall Street met Manchester Street. He then made his way to Kay's Bakery at 443 Lake Avenue. Once at the bakery, he called his friend, Ed Woodard and his mother.

3. Other witnesses' statements

Cynthia Hoffens initially denied seeing anything, but later told police that when she first arrived home in the car she saw a male, later identified as Cable, holding a gun. From the apartment, she saw Cable push David up against the wall of the neighboring house, grab David's neck, and then reach for the small of his back, "like he had a gun." However, she did not watch him long enough to see him pull anything out of his waistband. She later heard several gunshots but did not see the shooting. Shortly after the shooting, she received a call from David, who was crying. He told Cynthia he "didn't mean to do it." He also said he believed that "they [Cable and/or Bussierre] shot Edgar."

Daniel Morgan initially reported that he saw Cable approach David, yell, and then point a gun at Edgar as he and Cynthia were getting out of the car. However, in a later interview, Morgan said he went inside after he saw Bussierre and Cable approach David.

From inside the apartment, Morgan heard David and Cable yelling and then David called for Edgar to “come out here and bring his s****.”⁴ Morgan saw Cable grab David by the neck and push him against 329 Lake Avenue. He also said that he saw David holding up a gun. Morgan initially told investigators that Cable shot Edgar and then David shot Cable. However, he later said that he saw David hold up a gun and shoot Cable two to three times, and did not see who shot Edgar, but assumed that it had been Cable and after which David must have shot Cable and ran. Later, Morgan made a third statement to investigators that he heard two to three gunshots, but did not see what happened as he had turned away at the time. He denied ever seeing Cable with a weapon. After the shooting, Morgan heard Bussierre yell, “Why did you shoot him? That gun wasn’t even loaded!” He heard David reply, “Because he shot my brother.” Morgan then saw David run away from the home.

Three minors not affiliated with either of the involved parties were also witnesses to at least part of the shooting. Minor #1 was inside her apartment with a view of the walkway between 329 and 331 Lake Avenue. She gave the following account: She was about to walk out of the apartment when she heard arguing between two males. From her doorway she could see David arguing with another man, later identified as Cable. She heard Cable say, “Don’t point your f****ing gun at my face!”, and then saw Cable place an open hand on David’s chest and shove him up against the wall of 329 Lake Avenue. She could not see if Cable was holding anything in his right hand. She then saw David raise a black short-nose pistol up from the right side of his body into the air over his head. Upon seeing the gun, she fled back inside the apartment. She then heard three loud consecutive gunshots and heard a female scream.

Minor #2 was inside a different apartment with a view of the same walkway. From her window she saw a man later identified as Edgar Hoffens come down the back porch steps holding a gray handgun in his left hand. She initially reported that she heard a banging noise, and then looked out the window to see a man, later identified as Cable, lying on the ground while Edgar came off the porch firing two shots at someone who was running away. Later, after admitting that she had not been truthful, she gave the following account: She saw Edgar come down the back porch steps holding a handgun prior to hearing any shooting, but

⁴ Morgan explained that he knew this phrase meant David wanted Edgar to come outside with a gun.

never saw him fire the gun. She heard a female scream, “Just stop it already!” and several profanities. At that point, she turned toward her younger sibling when she heard what sounded like two gunshots, the second of which sounded louder than the first. She looked back out the window to see Edgar and Cable lying on the ground. She gathered up her sibling and raced to the interior of the apartment.

Minor #3 was in the same apartment as Minor #2, but in a different room. She heard a female yelling and then heard what sounded like approximately four gunshots. She ran to a window and saw a man in a blue-hooded sweatshirt, later identified as David, holding a black “circular-type gun” and running north until he was out of sight.

Ed Woodard told the police that he received a phone call from David, who said that that he had just shot someone who, “pulled a knife on him,” and he was afraid that he shot Edgar too. David asked Woodard for a ride and to be picked up at Manchester and Union Streets. Woodward did not pick David up, but instead went to the Hoffens’ home to see what was going on.

Bussierre’s brother, Steve Bussierre, told investigators that he removed Bussierre’s gun from 394 Wilson Street, where Bussiere had taken it after the shooting, and took it to his home on Dubuque Street, along with the four rounds that he found. He explained that he was fearful the young children at the Floyd house would find the gun, which he had found in the apartment unloaded and under a pillow. He loaded the gun with all four rounds and put it in a closet in his home. The handgun was located by police inside the closet within hours of the murder in the same condition that both John and Steve Bussierre described it.

After the shooting, Floyd came running shirtless towards 331 Lake Avenue with the intention of fighting David after their interaction earlier on Wilson Street. He was unaware there had been a confrontation between Cable and Hoffens or that a shooting had taken place. Upon arriving in the back alley he saw several police cruisers at the home. When asked why he was shirtless in the cold temperatures, Floyd explained that he began to take off his jacket, sweatshirt, and t-shirt to be ready to fight, despite the cold.

Physical Evidence

Officers recovered David’s holster and sweatshirt in the locations where he said he threw them. However, they were unable to locate David’s .32 caliber revolver, despite an

extensive three-day search. Officers searched the entire route of David's travel following the shooting, and delayed trash pick-up for several days to ensure the weapon was not comingled with outgoing trash. Manchester officers also enlisted the aid of officers and trained K-9 units from the Bureau of Alcohol Tobacco and Firearms and the Boston Police Department, as well as members of the New Hampshire State Police Bomb Squad and Manchester Fire Department to search streets, alleyways, sewers, rooftops and gutters.

A single .32 caliber bullet was recovered from Edgar's body during autopsy. A single .32 caliber bullet was also recovered from Cable's body during his autopsy. A forensic examination of the bullets revealed that they had the same class characteristics and were consistent with having been discharged from the same gun barrel.

The black semiautomatic .45 handgun that was in Cable's possession at the time of the shooting was recovered at Steve Bussierre's home the night of the shooting. An examination by Manchester Police Department officers revealed that the weapon had not been fired recently, as there was built up layer of dust along the length of the barrel. There was no evidence at the scene indicating that the .45 handgun had been fired that day.

Edgar's 9mm Ruger was examined by Manchester police officers and it too did not appear to have been fired recently. There was no evidence at the scene indicating that the 9mm Ruger had been fired that day.

Upon Cable's admission to the hospital, a black folding knife was found in his possession. Due to medical treatment prior to his admission, it is unclear where he was carrying this knife on his person prior to its discovery.

Jennifer Russell's 911 call was recorded and preserved. A review of the call showed that Russell made the call at approximately 3:51 PM. Approximately ten seconds into the phone call, Russell's demeanor changes indicating that the shooting has just occurred while she was on the line. Approximately twelve seconds in, someone shouts, "I'm going to f***ing kill you!" Two seconds later, a male voice can be heard saying, "They shot Eddie!"

Autopsy Findings

Charles Cable suffered two gunshot wounds. The first shot entered his right shoulder, passed through soft tissues only, and exited through his right arm. The second wound was fatal as the shot entered his left temple and then into his brain. A .32 caliber bullet was

recovered that was associated with this wound. This shot was not a contact shot or a close-range shot. The left to right path of the bullet was consistent with David's description of Cable spinning back towards him when David fired at him a second time. Toxicology tests revealed Cable had a blood alcohol concentration of 0.138 at the time of his death, well over the legal limit to drive. The cause of Cable's death was a gunshot wound of the head. The manner of death was ruled homicide, in that it was caused by another person.

Edgar Hoffens suffered a single gunshot wound. The .32 caliber bullet entered in the middle of Edgar's chest and was recovered from the left side of his back. The cause of death was ruled a single gunshot wound of the chest and the manner of death was ruled a homicide, in that it was caused by another person.

THE APPLICABLE LAW AND LEGAL STANDARDS

New Hampshire's laws regarding self-defense are contained in RSA Chapter 627. RSA 627:4 states that a person may be justified in using deadly force for self protection or to protect others in certain circumstances. Two of those circumstances are relevant here. RSA 627:4, II (a) permits the use of deadly force by an actor against another "when he reasonably believes that such other person [i]s likely to use unlawful, deadly force against the actor or a third person." RSA 627:4, II (d) permits the use of deadly force by an actor against another "when he reasonably believes that such other person [i]s likely to use any unlawful force in the commission of a felony against the actor within such actor's dwelling or its curtilage." Deadly force is defined as any assault which the actor commits with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily injury. RSA 627:9, II.

Some discussion of the terms used in each of the above-sections is appropriate. The phrase "reasonably believes" means that the actor, i.e., the person using deadly force, "need not have been confronted with actual deadly peril, as long as he could reasonably believe the danger to be real." State v. Gorham, 120 N.H. 162, 163-64 (1980). The term "reasonable" "is determined by an objective standard." State v. Leaf, 137 N.H. 97, 99 (1993). That means

that in deciding whether a person justifiably acted in self-defense, all the circumstances surrounding the incident should be considered from the perspective of a reasonable person. See Leaf, 137 N.H. at 99; Aldrich v. Wright, 53 N.H. 398 (1873). The amount of deadly force used by the actor to protect himself or others must also be reasonable, and not excessive. See State v. Etienne, 163 N.H. 57, 70 (2011).

When reviewing a deadly force incident, the actor's conduct should be viewed "under the circumstances as they were presented to him at the time, and not necessarily as they appear upon detached reflection." N.H. Criminal Jury Instructions, 3.10. Thus, even a mistaken belief that deadly force was necessary could still be justified under the law if that belief was reasonable, since the law does not require the person using deadly force to "have been confronted with actual deadly peril, as long as he could reasonably believe the danger to be real." Gorham, 120 N.H. at 163-64.

The law also provides that people in their dwellings or the curtilage surrounding that dwelling, or people who are anywhere they have a right to be, have no duty to retreat from the encounter before resorting to deadly force to protect themselves or others, if they were not the initial aggressor. See RSA 627:4, III(a). The term curtilage has long been referred to as "the area to which extends the intimate activity associated with the 'sanctity of a man's home and the privacies of life'" Oliver v. United States, 466 U.S. 170, 180 (1984) (quoting Boyd v. United States, 116 U.S. 616, 630 (1886)). However, the boundaries and contents of curtilage are not easily described. Johnson, 159 N.H. at 112. Curtilage questions are fact-sensitive, and courts resolve them by examining the nature of the area at issue and then asking whether such an area is as deserving of protection from governmental intrusion as the house. Id. The New Hampshire Supreme Court has stated that the curtilage includes those outbuildings which are directly and intimately connected with the habitation and in proximity thereto, and the land or grounds surrounding the dwelling which are necessary and convenient and habitually used for family purposes and carrying on domestic employment. Id. (citing Pinkham, 141 N.H. at 190 (quotation and italics omitted)). Courts have explained that four factors may be examined in determining whether an area is curtilage: (1) the proximity of the area claimed to be curtilage to the home, (2) whether the area is included within an enclosure surrounding the home, (3) the nature of the uses to which the area is put,

and (4) the steps taken by the resident to protect the area from observation by people passing by. United States v. Dunn, 480 U.S. 294, 301 (1987). These factors are useful analytical tools only to the degree that, in any given case, they bear upon the centrally relevant consideration — whether the area in question is so intimately tied to the home itself that it should be placed under the home's ‘umbrella’ of Fourth Amendment protection. Id. (citations omitted).

Finally, in any case where a person who has used deadly force later claims self-defense, the State has the burden to disprove that self-defense claim beyond a reasonable doubt in order to secure a conviction. See State v. McMinn, 141 N.H. 636, 644-45 (1997). The person who used deadly force would have no obligation to show that his conduct was reasonable or met the requirements of the law.

ANALYSIS

The shooting by David Hoffens of Charles Cable was a justified use of deadly force pursuant to both RSA 627:4, II(a) and 627:4, II(d).

While there are some variations in the accounts of the circumstances immediately surrounding the shooting, the evidence leads to a conclusion that David Hoffens was justified in using deadly force against Charles Cable pursuant to RSA 627:4, II(a) because he reasonably believed Charles Cable was about to use unlawful deadly force against him. Cable was the initial aggressor in this circumstance – he made the conscious decision to arm himself for his confrontation with David, and he was the first person to pull out a gun. As the point that David and Cable struggled over David’s gun and the first shot was fired, Cable had already confronted David with his own gun and brandished it against David’s face, grabbed David by the throat and pushed him against a building, and reached for his gun out a second time when he saw Edgar holding his weapon. The escalation of Cable’s behavior, from brandishing a gun to grabbing David by the throat and pinning him against a building while reaching toward his waistband where his gun was located, could lead a reasonable person to believe that the next likely step was that Cable would fire his gun, justifying a self-defensive use of deadly force. The sequence of events during the next several seconds is not entirely clear, although it is apparent that David and Cable were struggling to gain/maintain

control over David's gun, during which two shots was fired and then David fired the shot that killed Cable.

David was under no obligation to retreat as he was within the curtilage of his dwelling, a place he had a right to be.⁵ The narrow strip of land between 329 and 331 Lake Avenue is just a few feet wide where Cable confronted David. It is also an area that surrounds David's apartment building and was necessary, convenient and habitually used for family purposes. Even if David had an obligation to retreat, it is not clear that he could have done so safely.

Finally, it is important to note that David was not the initial aggressor prior to using deadly force against Cable. Cable and Bussierre went to 331 Lake Avenue to confront David and Edgar about the ongoing feud and to arrange a fistfight between the Hoffens brothers and Floyd and his affiliates. Cable made the conscious decision to arm himself for the confrontation with David and Edgar. When David arrived at 331 Lake Avenue, Bussierre Cable was the first person to pull out a gun and he raked it down the side of David's face.

Although David was justified in using deadly force against Charles Cable pursuant to RSA 627:4, II(a), he was also justified in doing so pursuant to RSA 627:4, II(d) as he reasonably believed Cable would likely continue to use unlawful force against him in the commission of a felony within the curtilage of his apartment building. Cable initially approached David with a gun in his hand, pinned him against 329 Lake Avenue, and raked the gun down David's face.⁶ Bussierre admitted that Cable used his left hand to pin David to the wall and was the first to pull out a gun. Bussierre also heard Cable say words to the effect of, "If you want to, two can play at that game," when he went to pull his gun from his waistband anew after seeing Edgar with his gun on the porch. David's belief was reasonable that Cable was likely to continue to use unlawful force in the commission of a felony when he drew and eventually fired his revolver at Cable. Again, David had no duty to retreat as he was within the curtilage of his own dwelling, it is not clear that he could have done so safely, and he was not the initial aggressor of the incident.

⁵ See RSA 627:4, III (a).

⁶ These two acts by Cable constituted "unlawful force" by Cable against David.

The evidence is insufficient to establish who is responsible for the death of Edgar Hoffens.

Unlike the shooting of Charles Cable, the evidence is insufficient to establish who is responsible for the death of Edgar Hoffens. The evidence established that the bullets that struck Edgar and Cable were consistent with having been fired by the same gun, and the only gun that fired during the incident was David's.⁷ David told investigators that his revolver never left his possession despite Cable's struggle to get it away from him. Consistent with the positioning of the three individuals, it is clear that the first shot fired during that struggle was the one that struck and killed Edgar. What is unclear is whether the trigger of the revolver was pulled by Cable, David, or both when Cable grabbed David's hand and fought for control of the gun. It is also unclear whether whomever fired the shot did so with a criminal intent or accidentally.⁸ In light of these uncertainties, and the inability to discover further testimonial or physical evidence which might answer this ambiguity, neither Cable nor David could be charged with any criminal conduct in connection with Edgar's death.

CONCLUSION

Based on the applicable law and all the facts and circumstances of this case, the Attorney General has determined that at the point that David fired his gun, he reasonably believed that Charles Cable was likely to use imminent deadly force against him, and that Cable was likely to continue using unlawful force against him during the commission of felony. Therefore, David's use of deadly force against Cable was legally justified pursuant to RSA 627:4, II (a) and (d), respectively. Accordingly, no criminal charges will be brought against David in connection with the shooting death of Charles Cable.

Based on the applicable law and all the facts and circumstances of this case, the Attorney General has also determined that there is insufficient evidence to determine whose actions brought about Edgar Hoffens' death and whether that person bore any criminal intent

⁷ The only other two guns present, Edgar's black and gray handgun and Bussierre/Cable's black .45 handgun, were examined and showed no signs of having been fired recently.

⁸ If evidence conclusively showed Cable's fired the revolver in the struggle, then no prosecution would be possible based upon his death. If evidence conclusively showed David's fired the revolver in the struggle trying to defend himself against Cable, then an argument exists that he would not be liable unless he also acted carelessly or without regard to the safety of nearby bystanders. See 40 Am.Jur.2d Homicide, Sec. 143.

at the time. Accordingly, no criminal charges can be brought in connection with the shooting death of Edgar Hoffens.

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